IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

Crl.Rev.Pet.No. 606 of 2007()

CRA.266/2006 of ADDL. SESSIONS COURT (ADHOC-I), MANJERI
CC.570/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, MANJERI

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REVN. PETITIONER:

SOMAN, C NO. 3482,
CENTRAL JAIL, KANNUR

BY ADV. SRI.V.MANOJ KUMAR(STATE BRIEF)

RESPONDENTS:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22/10/2007, THE COURT ON 25/10/2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Dated: 25-10-2007

ORDER

In this revision preferred from the Central Prison, Kannur the revision petitioner was the accused in C.C. 570 of 2005 on the file J.f.C.M. -I, Manjeri challenges the conviction entered and the sentence passed concurrently against him for an offence punishable under Sec. 380 I.P.C.

2. The case of the prosecution can be summarised as follows:-

On 27-3-2005 at about 8 a.m. after gaining entry into the Sanctum Sanctorum of Ettiyottu Sri. Dharmasatha Temple at Manjeri, the accused committed theft of a gold chain weighing 3.34 gms containing 13 thalies from the idol of the goddess installed there. The accused has thereby committed an offence punishable under Sec. 380 I.P.C.

3. On the accused pleading not guilty to the charge framed against him by the J.F.C.M-I, Manjeri the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined examined 9 witnesses as P.Ws 1 to 9 and got marked 4 documents as Exts.P1 to P4 and one gold ingot as MO1.

4. After the close of the prosecution evidence, the accused was questioned under Section 313 (1) (b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence.

5. The learned Magistrate, after trial, as per judgment dated 19-5-2006 found the revision petitioner guilty of the offence and sentenced him to rigorous imprisonment for three years and to pay fine of Rs. 5,000/- and on default to pay the fine to suffer rigorous imprisonment for one year. Aggrieved by the conviction and sentence, the revision petitioner preferred an appeal as Crl. Appeal 266 of 2006 before the Sessions Court, Manjeri. As per judgment dated 25-10-2006, the learned Addl. Sessions Judge (Adhoc-I), Manjeri dismissed the appeal confirming the conviction entered and the sentence passed against him. Hence, this revision from the Central Prison, Kannur.

6. I heard Advocate Sri. Manoj Kumar, the learned counsel who defended the revision petitioner on State Brief and the learned Public Prosecutor, who defended the State.

7. What is unravelled by the evidence adduced by the prosecution is the following:-

P.W.5 (K.M. Krishnan Namboothiri) was the priest of Ettiyottu Sri. Dharmasastha Temple. On 27-3-2005, he went to the temple as usual for performing the poojas. At about 8 a.m. the accused came there for dharsan and he remitted money for offerings and thereafter left the temple. At about 8.30 a.m. P.W.5 noticed that the gold chain with 13 thalies was missing from the idol. He reported the matter to the members of the temple committee including P.W.6. He did not have any previous acquaintance with the accused. Very few people come for dharsan during the morning hours. On the date of occurrence, the accused alone had come.

8. P.W. 6 and 7 are the counter clerk and treasurer respectively of the temple committee of Ettiyottu Sri. Dharmasastha Temple. It was P.W.6 who had received remittance from the accused

for a particular offering on 27-3-2005. The accused was there in the temple premises for about 45 minutes. It was after the accused left the temple that the priest came and reported that the gold chain on the idol of the goddess was missing. The matter was reported to the police, who however, did not register any crime.

9. At 15-6-2005 at about 12.15 p.m. P.W.2 who was the Sub Inspector of Wandoor Police Station stumbled upon the accused from the vicinity of the Wandoor bus stand . Seeing the police party when the accused attempted to make good his escape from there he was restrained by the police party . Since the accused gave prevaricatory answers which were not convincing, he was arrested and Crime No. 152 of 2005 of Wandoor Police Station for an offence under Sec. 41 (1)(a) Cr.P.C. was registered against him. Subsequently the accused made a confession to the effect that he had sold the gold chain at a jewellery at Kozhikode and led the police party to K.V. Jewellery at Kidson Corner, Mananchitra, Kozhokode at 6 p.m. on 15-6-2006 from where the police recovered the melted ingot from the jewellery owner under Ext.P1 seizure mahazar. The jewellery owner confessed to the police that the said ingot was the product of melting the gold chain with 13 thalies sold to him by the accused. P.Ws 3 and 4 are attestors to Ext.P1 mahazar .

10. There was thus link evidence connecting the accused with the offence. P.W.5 the priest of the temple also identified the accused without any mistake. Likewise, P.Ws 5 and 6 who were the temple committee members also had no difficulty in identifying the person who had visited the temple for giving offerings. The recovery of the melted ingot pursuant to the confessional statement of the accused and the admission by the jewellery owner that MO1 is the melted

product of the gold chain with 13 thalies purchased by him from the accused completes the chain of circumstantial evidence pointing to the guilt of the accused. The conviction was rightly entered against the revision petitioner .

11. The sentence imposed on the revision petitioner also cannot be said to be disproportionately harsh or excessive. He is a habitual offender and penal servitude by way of incarceration alone can serve as an effective disincentive to such daring offenders. I see no ground to interfere with the sentence imposed on the revision petitioner as well.

In the result this revision is dismissed confirming the conviction entered and the sentence passed against the revision petitioner.

V. RAMKUMAR,
(JUDGE)

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V. RAMKUMAR, J.

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Dated: 25-10-2007

ORDER